

CHAPTER 22 WATER POLLUTION ENFORCEMENT

| | |
|--------------|---|
| Secs. | |
| 2200 | Purpose and Scope |
| 2201 | Jurisdiction and Delegation of Authority |
| 2202 | Notice of Violation |
| 2203 | Proposed Compliance Order or Proposed Cease and Desist Order |
| 2204 | Notice of Suspension, Revocation or Denial of a Permit or Certification |
| 2205 | Settlement Agreements and Consent Compliance Orders |
| 2206 | Hearings and Issuance of Final Order |
| 2207 | Immediate Compliance Orders, Immediate Cease and Desist Orders |
| 2208 | Penalties |
| 2209 | Appeals |
| 2210 | Civil Infractions |
| 2211 | Court Action in Lieu of Compliance Order or Cease and Desist Order |
| 2299 | Definitions |

2200 PURPOSE AND SCOPE

- 2200.1** The purpose of the rules in this chapter is to provide enforcement procedures for the water pollution control Act of 1984. These rules are developed pursuant to §§17, 18 and 19 of D.C. Law 5-188, the Water Pollution Control Act of 1984 and apply to the Act and the rules promulgated pursuant to the Act.
- 2200.2** If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid in a court of law, the remainder of this chapter and its application to any other persons or circumstances shall not be affected.

AUTHORITY: Unless otherwise noted, the authority for this chapter is §§17 through 19, and 21 of the Water Pollution Act of 1984, D.C. Law 5-188, D.C. Code §§6-936 through 6-938, and 6-940 (1995 Repl. Vol.), Mayor's Order No. 85-152, dated September 12, 1985.

SOURCE: Final Rulemaking publishing at 43 DCR 6347 (November 29, 1996).

2201 JURISDICTION AND DELEGATION OF AUTHORITY

- 2201.1** In every case in which a hearing is requested or otherwise required pursuant to the Act, the Director shall have jurisdiction to hear and render a final decision in the case.
- 2201.2** Office of Adjudication (OAD) procedures shall govern all cases in which a hearing is requested or otherwise required under the Act, unless inconsistent with this chapter in which case this chapter shall supersede the OAD procedures.
- 2201.3** Cases in which a hearing is requested or required pursuant to the Act shall be "Class A" cases under OAD procedures.

2201.4 The Director shall pursue enforcement actions through the following:

- (a) The issuance of notices of violation pursuant to §2202, proposed compliance orders and proposed cease and desist orders pursuant to §2203, and notices of intention to suspend, deny or revoke a license or certification pursuant to §2204;
- (b) The development and presentation of cases before the Office of Adjudication; and
- (c) The issuance of immediate cease and desist orders and compliance orders pursuant to §2207.

SOURCE: Final Rulemaking publishing at 43 DCR 6347 (November 29, 1996).

2202 NOTICE OF VIOLATION

2202.1 Any enforcement action under the Act shall be commenced with a written notice of violation or threatened violation issued to the owner, operator, or any other person deemed appropriate by the Director, except as provided in §2204 and in §2207.2.

2202.2 The notice of violation or threatened violation shall identify the violation or threatened violation and may require the person to take the corrective measures the Director considers reasonable and necessary.

2202.3 The notice of violation or threatened violation need not be denominated "Notice of Violation" or "Notice of Threatened Violation"; Provided, that the body of the notice makes clear that the person is presently "in violation of" or "out of compliance with" the Act or regulations, or, that failure to take the corrective measures directed, will constitute a violation of the Act or regulations.

2202.4 A notice of violation or threatened violation shall be served on the person or his or her authorized agent in person or by certified mail return receipt requested. If the person fails or refuses to accept certified mail, the notice of violation or threatened violation may be served by regular first class mail; Provided, that the following occurs:

- (a) The notice of violation is sent to the last known address listed by an owner or operator on a notification form or other official correspondence submitted to the Department; or

- (b) The accuracy of the address is verified.

2202.5 If a person objects to a notice of violation or notice of threatened violation on the grounds that the action directed is not necessary or appropriate from a technical, engineering, geophysical, or other scientific perspective, the person shall file a written statement including the grounds for his or her objections within fifteen (15) calendar days of service of the notice, or any other longer time period as the Director may specify.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6348 (November 29, 1996).

2203 PROPOSED COMPLIANCE ORDER OR PROPOSED CEASE AND DESIST ORDER

- 2203.1** If the person upon whom a notice of violation or threatened violation has been served, fails to comply with the corrective measures required in the notice of violation, the Director may issue a proposed compliance order or a proposed cease and desist order to that person.
- 2203.2** A proposed compliance order or proposed cease and desist order shall do the following:
- (a) Include a statement of the facts and nature of alleged violations, and the legal grounds for relief;
 - (b) Allow a reasonable time for compliance with the order consistent with the likelihood for harm and the need to protect health, safety, life, property, and the environment;
 - (c) Advise the person that he or she has a right to a hearing and to legal representation;
 - (d) Inform the person of any scheduled hearing date or the actions which the person must take to obtain a hearing and the consequences of failure to comply with the proposed order or request a hearing;
 - (e) Set forth the action or actions which the person must take or the activity or activities which the person must cease in order to comply with the order; and
 - (f) State the amount of any penalties to be assessed for failure to comply with the order.
- 2203.3** A proposed compliance order or proposed cease and desist order shall serve as a petition issued pursuant to OAD procedures.
- 2203.4** A proposed compliance order or proposed cease and desist order shall be served by one of the following methods:
- (a) Personal service on the person or the person's agent;
 - (b) Delivering to the last known home or business address of the person and leaving it with a person over the age of eighteen (18) years residing or employed therein; or
 - (c) Mailing, U.S. first class certified, postage prepaid to the last known home or business address of the person or the person's agent; or
 - (d) Any other means set forth in D.C. Law 5-188.

- 2203.5 A proposed compliance order or proposed cease and desist order may state in the order or accompanying summons or instructions, that the person is required to file an answer thereto, the time within which to respond, and the form of response required.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6349 (November 29, 1996).

2204 NOTICE OF SUSPENSION, REVOCATION OR DENIAL OF A PERMIT OR CERTIFICATION

- 2204.1 An action to suspend, revoke, or refuse to issue, renew, or restore a permit or certification provided for in the Act shall be initiated by a notice of proposed suspension, revocation or denial in accordance with this section in lieu of a notice of violation pursuant to §2202.

- 2204.2 The notice of proposed suspension, revocation or denial shall be in writing and shall include the following:

- (a) The name and address of the applicant for or holder of the permit or certification;
- (b) A statement of the proposed action;
- (c) A statement of the reasons for the proposed action in compliance with the requirements of §18 of the Act; and
- (d) Notice that the person has a right to a hearing at the time and place stated, and is required to file an answer.

- 2204.3 The notice of proposed suspension, revocation or denial shall serve as a petition pursuant to OAD procedures and shall be served in the same manner as a proposed compliance order pursuant to §2203.4.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6350 (November 29, 1996).

2205 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

- 2205.1 At any time during the course of the proceedings, the parties to the proceeding may enter into a settlement agreement signed by the parties. A settlement agreement or consent decree shall set forth each of the agreements made, actions to be taken by either party and any agreed-upon fines or penalties.

- 2205.2 A settlement agreement shall be effective when signed by the parties thereto and shall not require the signature of an Administrative Law Judge (ALJ) in order to be filed in the case.

- 2205.3 A settlement agreement may be submitted to the ALJ for approval.

- 2205.4 The parties may enter into a consent compliance order with the approval of the ALJ.

- 2205.5** A consent compliance order shall be signed by the parties to the case and by an ALJ, and shall have the force and effect of any final order. Unless otherwise stated therein, there shall be no right of appeal from a consent compliance order.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6351 (November 29, 1996).

2206 HEARINGS AND ISSUANCE OF FINAL ORDER

- 2206.1** Once a hearing is requested, motions practice, prehearing discovery, and the conduct of the hearing shall be in accordance with the D.C. Administrative Procedures Act and OAD procedures.
- 2206.2** The petitioner shall have the burden of going forward with and of proving that the violation occurred as set forth in the proposed compliance or cease and desist order, and that the proposed civil penalty, revocation or suspension, as the case may be, is appropriate.
- 2206.3** Following the establishment of a *prima facie* case, the person shall have the burden of presenting and of going forward with any defense to the allegations set forth in the petition. Each matter of controversy shall be determined by the ALJ upon a preponderance of the evidence.
- 2206.4** If a person scheduled for a hearing does not appear for the hearing, and no continuance has been granted, the ALJ may receive evidence and hear testimony and may render a decision on the basis of evidence before it.
- 2206.5** The ALJ shall inform the parties of an action taken under this section.
- 2206.6** A decision of the ALJ shall be supported by substantial, reliable, and probative evidence pursuant to D.C. Code §1-1509 (c) (1992 Repl. Vol.).
- 2206.7** The ALJ's decision and order shall include findings of fact and conclusions of law.
- 2206.8** A final compliance order shall also set forth the following:
- (a) The action or actions which must be taken by the person to correct a violation or threatened violation of the Act or regulations issued under the Act, and may include the following:
 - (1) Performance of testing, studies, investigations, monitoring;
 - (2) Performance of comprehensive site assessment;
 - (3) Upgrading of any facilities or systems needed to prevent a reoccurrence of the violation;
 - (4) Preparation of corrective action plans;
 - (5) Implementation of remediation plans;
 - (6) Maintenance and submission of records.

- (b) The amount of any civil penalties or damages to be imposed, as authorized by the Act;
- (c) Authorization for the Director to enter on property to undertake assessment and corrective action, if the person fails or refuses to comply with an order requiring the person to perform a site assessment or corrective action within the time period set forth in the order; and
- (d) Any applicable appeal rights.

2206.9 A final order suspending, revoking or denying a license, permit or certification shall state clearly the action taken, the reasons for the action, and any applicable appeal rights.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6351 (November 29, 1996).

2207 IMMEDIATE COMPLIANCE ORDERS, IMMEDIATE CEASE AND DESIST ORDERS

2207.1 The Director may issue, or may file a motion before an ALJ in OAD to issue, an immediate compliance order or an immediate cease and desist order, in order to require a person to correct a discharge or threat of discharge which is an imminent and substantial danger to the public health or welfare or to restrain any person from engaging in any unauthorized discharge or threat of discharge that immediately and substantially endangers the public health or welfare.

2207.2 When an immediate compliance order, or immediate cease and desist order, is authorized under this section, it shall not be necessary to first issue a notice of violation or proposed compliance order pursuant to §2202 or 2203 or to provide reasonable notice and an opportunity for a prior hearing pursuant to §2203.

2207.3 An immediate compliance order or immediate cease and desist order issued pursuant to this section shall be served in the same manner as a proposed compliance order or proposed cease and desist order is served pursuant to §2203.4.

2207.4 An immediate compliance order or immediate cease and desist order shall do the following:

- (a) Include a statement of the nature of the situation or violation;
- (b) Take effect at the time and on the date signed;
- (c) Identify the action or actions to be taken or ceased; and
- (d) Include a statement advising the person that he or she has a right to request a hearing before an ALJ within the OAD within seventy-two (72) hours of service of the order upon him or her, and that if a hearing is not requested within that time period, the order will become final.

2207.5 A hearing request shall not stay the effective date of the order.

2207.6 If a hearing is requested, the hearing shall be held within fifteen (15) days from the date that the hearing request is received by OAD and the ALJ shall issue a decision, including findings of fact and conclusions of law, no later than fifteen (15) days after the hearing.

2207.7 Immediate compliance orders and cease and desist orders issued pursuant to this section are distinguishable from "provisional emergency orders" issued by OAD and shall not be subject to the requirements for and limitations of such orders.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6352 (November 29, 1996).

2208 PENALTIES

2208.1 Penalties for failure to comply with a final compliance order, a final cease and desist order, or a final suspension, revocation or denial order shall be in accordance with §17 of the Act.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6354 (November 29, 1996).

2209 APPEALS

2209.1 Any person adversely affected or aggrieved by a final compliance order, cease and desist order or other administrative order issued pursuant to this chapter may appeal the action by filing a petition for review in the D.C. Court of Appeals.

2209.2 The appeal shall be filed in conformity with the Rules of the District of Columbia Court of Appeals within thirty (30) days of the date of service of the final order upon the party making the appeal.

2209.3 The filing of a petition for review shall not in itself stay enforcement of the order or decision of the Director or an ALJ, however, the appellant may request a stay before the OAD.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6354 (November 29, 1996).

2210 CIVIL INFRACTIONS

2210.1 In any instance where a civil fine, penalty or fee has been established pursuant to the "Civil Infractions Act" (D.C. Law 6-42, D.C. Code §6-2701 *et seq.*) and the "Civil Infractions Regulations" (Title 16 DCMR, Chapter 32) promulgated pursuant to, the civil fine, penalty or fee may be imposed as an alternative sanction to the penalties set forth in the Act.

2210.2 Where civil infractions fines are the only penalties pursued in a particular case, the Civil Infractions Regulations shall govern the proceedings in lieu of OAD procedures or this chapter.

2210.3 A civil infractions case may be consolidated for hearing together with another case against the same person in which a proposed compliance order or proposed cease and desist order has been issued.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6354 (November 29, 1996).

2211 COURT ACTION IN LIEU OF COMPLIANCE ORDER OR CEASE AND DESIST ORDER

2211.1 After a notice of violation has been issued and the time for compliance has expired, the Director may, in his or her discretion, institute a court action for injunctive relief, damages, civil penalties, or recovery of any corrective action costs incurred by the District government pursuant to §19 of the Act, in lieu of proceeding through the administrative process to issue a proposed compliance order or proposed cease and desist order.

2211.2 In order to require a person to correct a situation which immediately threatens health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment, the Director may, in his or her discretion, seek a temporary restraining order in Court in lieu of seeking an immediate compliance order or cease and desist order.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6354 (November 29, 1996).

2299 DEFINITIONS

2299.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Act - the Water Pollution Control Act of 1984, DC Law 5-188, as amended.

Director - the Director of D. C. Department of Consumer and Regulatory Affairs, or the Director's designee.

Person - any individual, including any owner or operator; partnership; corporation, including a government corporation; trust association; firm joint stock company; organization; commission; the District or federal government; or any other entity.

SOURCE: Final Rulemaking publishing at 43 DCR 6347, 6355 (November 29, 1996).